

**MEETING DATE:** February 23, 2011

**PROJECT NAME/SITE PLAN #:** FY 2012-2017 Capital Improvements Program (CIP) Review

**APPLICANT:** N/A

**ENGINEER:** N/A

**ATTORNEY:** N/A

**REQUEST/PROPOSAL:** Finding of Consistency

**ADDRESS/LOCATION:** N/A

**ZONING:** N/A

**PLANNING REGION:** N/A

**WATER/SEWER CLASS:** N/A

**COMP PLAN/LAND USE:** N/A

**STAFF:** Shawna Lemonds, Project Manager

**AUTHORITY:** *Article 66B of the Annotated Code of Maryland* requires that public facilities be submitted to and approved by the Planning Commission as consistent with the Comprehensive Plan, before construction or authorization. Such review shall be with respect to the location, character and extent of the facility.

**STAFF RECOMMENDATION:** Staff recommends that the Planning Commission find the FY 2012-2017 Capital Improvements Program (CIP) consistent with the Frederick County Comprehensive Plan

**EXHIBITS:**  
Exhibit #1: [Staff Recommended FY 2012-2017 CIP](#)

## BACKGROUND

**Article 66B of the Annotated Code of Maryland** requires that public facilities be submitted to and approved by the Planning Commission as consistent with the Comprehensive Plan, before construction or authorization. Such review shall be with respect to the location, character and extent of the facility.

**Article 66B of the Annotated Code of Maryland (Planning and Zoning Enabling Act) Section 3.08** states:

### **3.08 Mandatory Referrals to Planning Commission; Plan Adoption by Legislative Body**

- (a) *Subject to subsection (b) of this section, if a local legislative body has adopted a whole plan or a plan for one or more geographic sections of divisions of the local jurisdiction, a publicly or privately owned street, square, park or other public way, ground, or open space, or public building or structure, or public utility may not be constructed or authorized in the local jurisdiction or the major geographic section of the local jurisdiction until the location, character, and extent of the development has been submitted to and approved by the planning commission as consistent with the plan.*
- (b)
  - (1) *The planning commission shall communicate its decision and the reasons for its decision to the local legislative body or to the body that has jurisdiction over the financing of the public way, ground, space, building, structure, or utility.*
  - (2) *The local legislative body or other body having jurisdiction may overrule the decision by a recorded vote of not less than 2/3 of its entire membership.*
- (c)
  - (1) *If a planning commission fails to act on a submission within 60 days after the date of official submission to the planning commission, the submission shall be considered approved.*
  - (2)
    - (i) *If a local legislative body or other body having jurisdiction fails to act within 60 days after the date of submission of the recommendation of the planning commission, the local legislative body or other body with jurisdiction shall be considered to have concurred with the recommendation of the planning commission.*
    - (ii) *The local legislative body shall adopt the plan as a whole or for one or more major geographic sections or divisions of the jurisdiction, and further shall adopt any amendment, extension thereof, or addition thereto.*

## OVERVIEW OF THE CIP

Frederick County's CIP involves the development of a six-year plan for capital expenditures. Annually, each department evaluates its short term and long term needs, and determines which projects, if any, can be considered Capital Improvement items. Some departments may never have a capital project, while other departments have numerous capital projects such as Public Works and The Board of Education. These items are submitted in the form of departmental requests. Capital expenditures may include such items as the construction of a new school or library, as well as expansion or renovation of buildings, land acquisition, infrastructure and other items with a useful life of 15-20 years or more. The CIP provides Frederick County Government and the public with valuable information on each capital project, such as the scope (i.e., size, capacity, etc...); the fiscal year in which the project is scheduled to begin design, engineering and construction, as well as planned completion dates; a programmed amount to be expended each year, and the funding mechanism(s). The CIP also provides policy and guidelines, current Bond Rating, Debt Affordability, and current revenue information on an annual basis.

The selection of projects, from among those requested to receive CIP funding, is based on several criteria. First, the project must be consistent with the most recently adopted Comprehensive Plan. Second, the project must meet the most recently adopted CIP policy guidelines, page 191 of the Recommended CIP. Finally, there must be sufficient funds available to support the project. Review of the CIP occurs through several venues including the CIP Staff Funding Committee; the Frederick County Planning Commission; with the final decision resting with the Board of County Commissioners. Workshops and public hearings are held to provide County citizens a forum to understand and participate in the CIP process.

It is the responsibility of the Budget Office, the Community Development Division, and the Finance Division to develop a Staff Recommended CIP document. The Budget Office supplies various revenue data throughout the year, and is responsible for providing revenue projections used in the formulation of the CIP. The Budget Office also tracks all previously approved CIP projects, and monitors the progress of all projects, including status of each project's remaining funds.

The Community Development Division provides the current and projected countywide demographic information and development information necessary for CIP formulation. The Community Development Division also evaluates all requested CIP projects for consistency with the Comprehensive Plan and reviews their timing with other agency requests and countywide development activities.

The Finance Division is responsible for the actual distribution of funds to specific departments throughout the year. In addition, the Finance Division provides the valuable information on different funding sources and the Debt Affordability Model, which is essential for calculating precisely how much debt the County can afford over the six-year CIP.

At their December 21, 2010 meeting, the BOCC provided County Staff with direction regarding funding priorities for preparation of the FY 2012-2017 CIP:

- Keep Lincoln Elementary, Oakdale Elementary, and North Frederick Elementary projects on track, followed by:
- Critical Systemic Improvements
- Transportation

Based on this direction, the Staff Funding Committee prepared the Staff Recommended FY 2012-2017 CIP.

#### SUMMARY INDEX OF THE CIP BOOK:

- Page 2 begins the **Introduction and Revenue Sources**
- Page 8 begins a **Comparison of the Recommended (FY12-17) to the Adopted (FY 11-16) CIP**
- Page 23 begins **General Government** Projects
- Page 73 begins **Water and Sewer** Projects
- Page 87 begins **Solid Waste** Projects
- Page 91 begins **Parks and Recreation** Projects
- Page 107 begins **Watershed Restoration** Projects
- Page 113 begins **Roads, Bridges, Highways** Projects
- Page 147 begins **Frederick Community College** Projects
- Page 155 begins **Board of Education** Projects
- Page 185 begins **Municipality** Projects

The recommended CIP was able to identify **full or partial funding for 97 projects, totaling \$407,545,420.**

Like prior years, balancing the expenditures with revenues on an annual basis for the FY 2012-2017 CIP proved to be challenging. The combination of construction cost of priority projects along with the flat revenue projections, when applied to the six-year CIP, greatly reduced the ability to fund certain projects as requested. As a result, the timing of certain projects were delayed both from what was being requested and what was contemplated in the adopted CIP from last year, furthermore, like last year, many projects could not be funded at all during the six-year period.

In an effort to provide more consistency in the timing of projects from one CIP to another, a two phased approach of evaluating the CIP was utilized again this year. The process and results are provided in more detail beginning on page 2 of the Introduction. In short, the first submission for evaluation was simply the prior year approved CIP (FY11-16) with updated costs, and timing shifts that resulted in a delay. The second submission allowed the agencies to make new requests and other changes to the approved CIP such as moving the timing forward.

After reviewing the submissions and prioritizing projects based on BOCC direction, the major changes from the prior adopted CIP are summarized as follows:

- Brunswick Fire Station: Removed due to September 2010 letter from Volunteer Organization
- Walkersville Library: Delayed from FY 2015 to FY 2017 due to associated increase in operational costs and availability of impact fee revenue
- Utica DP (Phase 2): Delayed due to associated increase in operational costs and availability of recordation tax revenue
- Parks and Recreation Community Grants: Program suspended until further notice
- Thurston Road Culverts: Reduced scope and completed with in-house staff
- Reels Mill Road Bridge: Received funding prior to Pete Wiles Road Bridge per department's priorities

- FCC Science/Tech Hall Renovations: Moved up to FY 2012 from FY 2013 in order to match state funding. This was only accomplished by FCC moving surplus funding from a current project and delaying funding for 2 other projects
- FCPS/BOE priority shift:
  - The first 3 priorities remain the same: Lincoln ES addition/modernization, Oakdale ES addition, North Frederick ES replacement/modernization
  - Priorities beyond the first 3 have changed per FCPS/BOE input:  
*Previously: Waverley ES addition, Kemptown ES addition, and Urbana MS addition*  
*Currently: Frederick HS modernization, Urbana area ES new, Waverley ES addition*
  - Waverley ES and Kemptown ES were delayed in order to accommodate the change in priorities
- Municipalities: Church Street Parking Deck Rehab/Rebuild change in project. The City of Frederick planned to replace the parking deck in FY 2014, and is now going to rehab the existing structure and extend the useful life, with replacement occurring beyond the six-year CIP

Lastly, projects that are not anticipated to be funded in the six-year CIP have been removed from the document. Many of the County departments/agencies have comprehensive or master plans that outline the upcoming projects and those documents should be the primary source to be used to identify those projects beyond the six-year CIP timeframe.

### **Finding of Consistency:**

In the recent past, the Planning Commission has struggled to understand the purpose of the CIP, the role of the Commission with respect to a 'finding of consistency', and the definition of 'consistency' with respect to Article 66B. Earlier sections of this staff report and the CIP itself describe these things, however, it may be useful to reiterate it here.

In short the CIP is a six-year funding document or plan of action based on current known fiscal conditions and projections. The only year in which funding is real (i.e. can be appropriated) is the first year, in this case it is Fiscal Year 2012. The remaining years are a balance of projected revenues, expenditures and the prioritization of capital projects. The CIP IS NOT intended to, nor is it expected to implement an entire Countywide or Functional Plan in its entirety.

As for the Planning Commission's role, while limited as prescribed in Article 66B section 3.08 with respect to a finding of consistency, it is not a rubber stamp. Community Development Division involvement (described above) in the CIP Funding Committee is an extension of the Planning Commission role of reviewing the CIP for consistency. Preparation of the CIP is a process; a milestone in that process is the Commission affirming staff's recommendation with respect to the CIP projects being consistent with the County Plan.

In addition, recent amendments to Article 66B (as provided for in 2009 SB-280) provide further guidance in making recommendations with respect to “findings of consistency”. The bill indicates that:

“.....REQUESTS THAT AN ACTION BE “CONSISTENT WITH” OR HAVE “CONSISTENCY WITH” A COMPREHENSIVE PLAN, THE TERM SHALL BE DEFINED TO MEAN AN ACTION TAKEN THAT WILL FURTHER, AND NOT BE CONTRARY TO, THE FOLLOWING ITEMS IN THE PLAN: (1) POLICIES; (2) TIMING OF THE IMPLEMENTATION OF THE PLAN; (3) TIMING OF DEVELOPMENT; (4) TIMING OF REZONING; (5) DEVELOPMENT PATTERNS; (6) LAND USES; AND (7) DENSITIES OR INTENSITIES.”

Lastly, in an effort to provide even more clarity on how to define consistency, the following excerpt is from the Maryland Department of Planning Models and Guidelines Document titled: ‘Achieving Consistency under the Planning Act’. It states:

*The fundamental concept of “consistency” under the new Planning Act is that land use regulations and decisions should agree with, and implement what the Plan recommend and advocates. A consistent regulation or decision may show clear support for the Plan. It may also be neutral – but it should never undermine the Plan.*

**RECOMMENDATION:**

To that end, Staff recommends that the Frederick County Planning Commission find:

1. That the location, character, and extent of the Recommended Fiscal Years 2012-2017 Capital Improvement Program are consistent with the Frederick County Comprehensive Plan.

Should the Planning Commission find that the location, character, and extent of the Staff Recommended Fiscal Years 2012-2017 Capital Improvement Program *are not* consistent with the Frederick County Comprehensive Plan, it is recommended that the Commission include its reasons (as prescribed in subsection (b) of Article 66B section 3.08) in an effort to aid the Board of County Commissioners in understanding the issue(s) of concern.